

1 Introduced by Committee on Commerce and Economic Development

2 Date:

3 Subject: Labor; workers' compensation; unemployment insurance;

4 employment practices; wages; contingent employees; employment

5 benefits

6 Statement of purpose of bill as introduced: This bill proposes to:

7 (1) make miscellaneous amendments to the workers' compensation
8 statutes;

9 (2) create a working group to study and make recommendations
10 concerning the appropriate location for the Division of Vocational
11 Rehabilitation;

12 (3) require the Department of Labor to conduct a study of the workers'
13 compensation system and opiate abuse;

14 (4) require employers to inform an employee when his or her
15 employment by the employer will not make the him or her eligible for
16 unemployment benefits;

17 (5) provide the Commissioner of Labor with authority to issue a
18 stop-work order to an employer for a continuous and ongoing failure to pay
19 wages;

20 (6) define and apply the protections of Vermont's employment laws to
21 temporary employees and home workers;

1 (7) require the Department of Labor to conduct a study of the efficacy of
2 Vermont’s employment laws in relation to the State’s contingent workers; and

3 (8) create a study committee to study mechanisms for creating portable
4 insurance, retirement, and other employee benefits to address the needs of
5 individuals that are freelance workers in e-commerce, self-employed workers,
6 or workers in the “on-demand” or “app” economy.

7 An act relating to miscellaneous workers’ compensation, unemployment
8 insurance, and employment practices amendments

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 * * * Workers’ Compensation * * *

11 Sec. 1. 21 V.S.A. § 640 is amended to read:

12 § 640. MEDICAL BENEFITS; ASSISTIVE DEVICES; HOME AND
13 AUTOMOBILE MODIFICATIONS

14 * * *

15 (c) ~~An employer shall not withhold any wages from an employee for the~~
16 ~~employee’s absence~~ If an employee is absent from work for treatment of a
17 work injury or to attend a medical examination related to a work injury, the
18 insurance carrier liable to provide compensation for the employee’s injury or,
19 if the employer is self-insured, the employer liable to provide compensation for
20 the employee’s injury shall pay the employee his or her current wages for the

1 time missed from work to attend the appointment. If the employee selects a
2 new health care provider in accordance with subsection (b) of this section, the
3 employer shall have the right to require other medical examinations as
4 provided in this chapter.

5 * * *

6 Sec. 2. 21 V.S.A. § 641 is amended to read:

7 § 641. VOCATIONAL REHABILITATION

8 (a) When, as a result of an injury covered by this chapter, an employee is
9 unable to perform work for which the employee has previous training or
10 experience, the employee shall be entitled to vocational rehabilitation services,
11 including retraining and job placement, as may be reasonably necessary to
12 restore the employee to suitable employment. Vocational rehabilitation
13 services shall be provided as follows:

14 * * *

15 (3) The Commissioner shall adopt rules to ensure that a worker who
16 requests services or who has been out of work for more than ~~90~~ 60 days ~~is~~
17 ~~timely and cost-effectively screened for benefits under this section~~ receives an
18 entitlement assessment. The rules shall provide that:

19 (A) ~~Provide that all vocational rehabilitation work, except for initial~~
20 ~~screenings, be performed by a Vermont-certified vocational rehabilitation~~
21 ~~counselor including counselors currently certified pursuant to the rules of the~~

1 ~~Department. Initial screenings shall be performed by an individual with~~
2 ~~sufficient knowledge or experience to perform adequately the vocational~~
3 ~~rehabilitation screening functions. If an injured worker receives temporary~~
4 ~~total disability benefits for a period of 60 consecutive days, the employer shall,~~
5 ~~within 15 days of the 60th day, submit a memorandum to the Department and~~
6 ~~shall refer the injured worker to a Vermont-certified vocational rehabilitation~~
7 ~~counselor for a preliminary entitlement assessment.~~

8 (B) ~~Provide for an initial screening to determine whether a full~~
9 ~~assessment is appropriate. An injured worker who is determined to be eligible~~
10 ~~for a full assessment shall be timely assessed and offered appropriate~~
11 ~~vocational rehabilitation services. Within 15 days of referral, the certified~~
12 ~~vocational rehabilitation counselor shall complete a preliminary entitlement~~
13 ~~assessment based on communications with the injured worker, the treating~~
14 ~~physician, and the employer. If the preliminary assessment determines that,~~
15 ~~more likely than not, the injured worker is unable to perform work for which~~
16 ~~he or she has previous training or experience without vocational services, then~~
17 ~~the vocational rehabilitation counselor shall perform a full entitlement~~
18 ~~assessment within 30 days, unless additional time is granted by the~~
19 ~~Commissioner. The vocational rehabilitation counselor shall document all~~
20 ~~communications with the injured worker, the treating physician, and the~~

1 employer, and any evidence relied on in making his or her preliminary or full
2 assessment.

3 (C) ~~Provide a mechanism for a periodic and timely screening of~~
4 ~~injured workers who are initially found not to be ready or eligible for a full~~
5 ~~assessment to determine whether a full assessment has become appropriate. If~~
6 ~~the preliminary assessment does not sufficiently establish the injured worker's~~
7 ~~ability to perform work to enable the certified vocational rehabilitation~~
8 ~~counselor to determine whether the worker is entitled to vocational~~
9 ~~rehabilitation services, the counselor shall reevaluate the injured worker every~~
10 ~~30 days, or at a longer interval if the Commissioner determines that the~~
11 ~~circumstances justify it, until a preliminary determination can be made.~~

12 (D)(i) ~~Protect against potential conflicts of interest in the assignment~~
13 ~~and performance of initial screenings. An employer that fails to either submit~~
14 ~~the memorandum or make a referral for a preliminary entitlement assessment~~
15 ~~as required pursuant to subdivision (A) of this subdivision (3) shall be subject~~
16 ~~to an administrative penalty of \$100.00 per occurrence.~~

17 (ii) If an employer fails to make a referral within the time required
18 pursuant to subdivision (A) of this subdivision (3), then the injured worker
19 may choose, or the Commissioner may assign, a certified vocational
20 rehabilitation counselor to perform the preliminary assessment.

1 (iii) The cost of any assessments shall be paid by the employer in
2 accordance with rules adopted by the Commissioner.

3 (E) All vocational rehabilitation work shall be performed by a
4 Vermont-certified vocation rehabilitation counselor, including counselors
5 currently certified pursuant to the Department’s rules.

6 (F) ~~Ensure the~~ The injured worker has a choice of a may select the
7 certified vocational rehabilitation counselor.

8 * * *

9 Sec. 3. 21 V.S.A. § 660a is amended to read:

10 § 660a. ELECTRONIC FILING OF REPORTS OF INJURY

11 * * *

12 (f) An insurance carrier and its representatives or agents, and, to the extent
13 practicable, an injured worker and his or her representative shall file all
14 evidence electronically in a format specified by the Commissioner.

15 Sec. 4. VOCATIONAL REHABILITATION WORKING GROUP

16 (a) Creation. There is created the Vocational Rehabilitation Working
17 Group to study and make recommendations concerning the most appropriate
18 location for the Division of Vocational Rehabilitation, and whether the
19 Division should be transferred from the Agency of Human Services to the
20 Department of Labor.

1 (b) Membership. The Working Group shall be composed of the following
2 five members:

3 (1) the Secretary of Administration or designee;

4 (2) the Secretary of Human Services or designee;

5 (3) the Commissioner of Finance or designee;

6 (4) the Commissioner of Labor or designee; and

7 (5) the Director of the Division of Vocational Rehabilitation.

8 (c) Powers and duties.

9 (1) The Working Group shall study:

10 (A) the best organizational structure and most appropriate placement
11 for the Division of Vocational Rehabilitation; and

12 (B) whether the Division of Vocational Rehabilitation should be
13 housed within the Department of Labor.

14 (2) If the Working Group determines that the Division of Vocational
15 Rehabilitation should be housed within the Department of Labor, the Working
16 Group shall develop a plan to transfer the Division from the Agency of Human
17 Services to the Department of Labor. The plan shall include:

18 (A) the appropriate time frame for the transfer;

19 (B) an analysis of the steps necessary to carry out the transfer;

20 (C) an analysis of potential costs and savings associated with
21 the transfer;

1 (D) an analysis of any potential impact upon employees and
2 customers, and recommendations as to how to minimize any potential negative
3 impacts; and

4 (E) an analysis of any other issue that the Working Groups deems
5 appropriate.

6 (d) Assistance. The Working Group shall have the administrative,
7 technical, and legal assistance of the Department of Labor. The Working
8 Group may consult with any stakeholders or persons it deems appropriate.

9 (e) Report. On or before December 1, 2016, the Working Group shall
10 submit a written report to the House Committees on Commerce and Economic
11 Development and on Government Operations, and the Senate Committees on
12 Economic Development, Housing and General Affairs and on Government
13 Operations. The report shall set forth:

14 (1) The results of the study conducted pursuant to subdivision (c)(1) of
15 this section.

16 (2) The Working Group's recommendation as to whether the Division of
17 Vocational Rehabilitation should be housed within the Department of Labor.

18 (3) If the Working Group recommends that the Division of Vocational
19 Rehabilitation should be housed within the Department of Labor, the Working
20 Group's plan to transfer the Division from the Agency of Human Services to
21 the Department of Labor. The Working Group's plan shall address the issues

1 set forth in subdivision (c)(2) of this section and make recommendations as to
2 any legislation necessary to implement the transfer.

3 (f) Meetings.

4 (1) The Secretary of Administration shall call the first meeting of the
5 Working Group to occur on or before August 1, 2016.

6 (2) The Committee shall select a chair from among its members at the
7 first meeting.

8 (3) A majority of the membership shall constitute a quorum.

9 (4) The Working Group shall cease to exist on December 1, 2016.

10 Sec. 5. DEPARTMENT OF LABOR STUDY ON WORKERS'

11 COMPENSATION AND OPIATES

12 (a) The Department of Labor shall study the best way to address the impact
13 of opiate abuse upon the workers' compensation system and Vermont's labor
14 market and workforce, including the following issues:

15 (1) whether to establish a pharmacy benefit manager program for
16 prescription drugs under the workers' compensation system;

17 (2) whether there are more effective ways to manage and control the
18 prescription of opiates for injured workers who are covered by the workers'
19 compensation system;

1 (3) whether there are alternative treatment approaches that may produce
2 better outcomes with respect to the ability of individuals to recover and return
3 to work;

4 (4) the number of injured workers who are covered by the workers’
5 compensation system that abuse opiates, and how to obtain and track data to be
6 able to measure whether this number increases or decreases in the future;

7 (5) how other states have addressed the impact of opiate abuse upon the
8 workers’ compensation system, labor market, and workforce; and

9 (6) evidence-based best practices relevant to these issues, including:

10 (A) managing and controlling the prescription of opiates;

11 (B) the use of alternative treatments; and

12 (C) facilitating the ability of individuals to recover and return to work
13 or continue to work.

14 (b) The Department of Labor shall consult with stakeholders, including
15 health care and insurance providers, treatment and recovery providers, and
16 appropriate State agencies and departments. State agencies and departments
17 shall cooperate with the Department of Labor.

18 (c) On or before December 1, 2016, the Department shall submit a written
19 report to the House Committee on Commerce and Economic Development and
20 the Senate Committee on Economic Development, Housing and General
21 Affairs with its findings and recommendations.

1 * * * Unemployment Insurance * * *

2 Sec. 6. 21 V.S.A. § 1346 is amended to read:

3 § 1346. CLAIMS FOR BENEFITS; REGULATIONS

4 (a) Claims for benefits shall be made in accordance with such regulations
5 as the ~~board~~ Board may prescribe. Each employer shall post and maintain
6 printed statements of such regulations in places readily accessible to
7 individuals in his or her service and shall make available to each such
8 individual, at the time he or she becomes unemployed, a printed statement of
9 such regulations. Such printed statements shall be supplied by the
10 ~~commissioner~~ Commissioner to each employer without cost to him or her.

11 (b) Each employing unit that is not an employer pursuant to subdivision
12 1301(5) of this chapter, or that employs individuals whose services are not
13 covered employment pursuant to subdivision 1301(6) of this chapter, shall
14 inform each affected prospective employee in writing, at the time that an offer
15 of employment is made, that wages earned by the individual in the employ of
16 the employing unit cannot be used for the purpose of establishing monetary
17 eligibility for benefits under this chapter.

18 (c) Every person making a claim shall certify that he or she has not, during
19 the week with respect to which waiting period credit or benefits are claimed,
20 earned or received wages or other remuneration for any employment, whether
21 subject to this chapter or not, otherwise than as specified in his or her claim.

1 All benefits shall be paid in accordance with such regulations as the ~~board~~
2 Board may prescribe.

3 * * * Employment Practices * * *

4 Sec. 7. 21 V.S.A. § 342a is amended to read:

5 § 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

6 * * *

7 (e) If, after the Commissioner has issued a written determination and an
8 order for collection, the Commissioner determines that the employer has
9 willfully failed to pay the wages due and that the willful failure is continuous
10 and ongoing, the Commissioner may issue an emergency order to that
11 employer to stop work until the employer has paid the amount due pursuant to
12 the order for collection. If the Commissioner determines that issuing a
13 stop-work order would immediately threaten the safety or health of the public,
14 the Commissioner may permit work to continue until the immediate threat to
15 public safety or health is removed. The Commissioner shall document the
16 reasons for permitting work to continue, and the document shall be available to
17 the public. In addition, the employer shall be assessed an administrative
18 penalty of not more than \$250.00 for every day that the employer fails to pay
19 the amount due pursuant to the order for collection after the Commissioner
20 issues the stop-work order. When a stop-work order is issued, the
21 Commissioner shall post a notice at a conspicuous place on the work site of the

1 employer informing the employees that their employer failed to comply with
2 this subchapter and that work at the work site has been ordered to cease until
3 the amount due pursuant to the collection order has been paid. The stop-work
4 order shall be rescinded as soon as the Commissioner determines that the
5 employer has paid the amount due pursuant to the collection order.

6 (f) Within 30 days after the date of the collection order, the employer or
7 employee may file an appeal from the determination to a departmental
8 administrative law judge. The appeal shall, after notice to the employer and
9 employee, be heard by the administrative law judge within a reasonable time.
10 The administrative law judge shall review the complaint de novo, and after a
11 hearing, the determination and order for collection shall be sustained,
12 modified, or reversed by the administrative law judge. Prompt notice in
13 writing of the decision of the administrative law judge and the reasons for it
14 shall be given to all interested parties.

15 (f)(g) Notwithstanding any other provision of law, the employer or
16 employee may appeal the decision of the administrative law judge within 30
17 days by filing a written request with the Employment Security Board. The
18 appeal shall be heard by the Board after notice to the employee and employer.
19 The Board may affirm, modify, or reverse the decision of the administrative
20 law judge solely on the basis of evidence in the record or any additional
21 evidence it may direct to be taken. Prompt notice of the decision of the Board

1 shall be given to the employer and employee in the manner provided by section
2 1357 of this title. The Board’s decision shall be final unless an appeal to the
3 Supreme Court is taken. Testimony given at any hearing upon a complaint of
4 unpaid wages shall be recorded, but the record need not be transcribed unless
5 ordered. The costs of transcription shall be paid by the requesting party.

6 ~~(g)~~(h) The Commissioner may enforce a final order for collection under
7 this section within two years of the date of the final order in the Civil Division
8 of the Superior Court.

9 ~~(h)~~(i) Information obtained from any employer, employee, or witness in the
10 course of investigating a complaint of unpaid wages shall be confidential and
11 shall not be disclosed or open to public inspection in any manner that reveals
12 the employee’s or employer’s identity or be admissible in evidence in any
13 action or proceeding other than one arising under this subchapter. However,
14 such information may be released to any public official for the purposes
15 provided in subdivision 1314(e)(1) of this title.

16 Sec. 8. 21 V.S.A. chapter 5, subchapter 14 is added to read:

17 Subchapter 14. Contingent Employees

18 § 581. DEFINITIONS

19 As used in this subchapter:

20 (1) “Client company” means either:

1 (A) a person who enters into an agreement with an employee leasing
2 company to lease any or all of its regular employees; or

3 (B) a person who enters into an agreement with a temporary help
4 company to employ temporary employees hired by the temporary help
5 company.

6 (2) “Contingent employee” means a temporary employee, leased
7 employee, or home worker.

8 (3) “Employer” shall have the same meaning as in section 302 of this
9 chapter.

10 (4) “Employment agency” shall have the same meaning as in section
11 495d of this chapter.

12 (5) “Home worker” means an individual employed to work from his or
13 her home by an employer for whom he or she provides services or
14 manufactures goods according to specifications furnished by the employer that
15 are required to be delivered upon completion to the employer or a person
16 designated by the employer.

17 (6) “Labor organization” shall have the same meaning as in section 495d
18 of this chapter.

19 (7) “Leased employee” means an individual employed by an employee
20 leasing company, as that term is defined in section 1031 of this title, who is
21 provided to a client company to perform ongoing services for an indefinite

1 time pursuant to one or more employee leasing agreements executed between
2 the leasing company and the client company.

3 (8) “Temporary employee” means an individual employed by a client
4 company pursuant to an agreement with a temporary help company.

5 (9) “Temporary help company” means a person, corporation, or
6 association engaged in the business of hiring its own employees and assigning
7 them to clients to support or supplement the client’s workforce in certain
8 situations, including employee absences, temporary skill shortages, seasonal
9 workloads, and special assignments and projects.

10 § 582. TEMPORARY WORK ASSIGNMENTS; REQUIRED NOTICE

11 (a) Upon giving a temporary employee a new work assignment, a
12 temporary help company shall provide the temporary employee with written
13 notice of the following information related to the assignment:

14 (1) the name, address, and telephone number of the client company and
15 the temporary help company;

16 (2) a description of the job to be performed during the work assignment;

17 (3) information regarding any hazards related to the job;

18 (4) the requirements for the work assignment, including any special
19 clothing, equipment, training, or licenses;

20 (5) the estimated length of the work assignment;

1 (6) the rate of pay, including benefits and overtime, and the designated
2 payday;

3 (7) the temporary employee’s expected work schedule;

4 (8) any costs permitted by law that will be charged to the temporary
5 employee for meals, transportation, supplies, or training; and

6 (9) the name, address, and telephone number of the temporary help
7 company’s workers’ compensation insurance carrier and the policy number of
8 the temporary help company’s valid Vermont workers’ compensation policy
9 with that insurance carrier.

10 (b) A temporary help company shall retain a copy of each notice required
11 by subsection (a) of this section for three years after the termination of each
12 work assignment. A temporary employee may request a copy of the notice at
13 any time during the three years after the termination of the work assignment.
14 The temporary help company shall provide the temporary employee with a
15 copy of the required notice at no charge to the temporary employee within 10
16 days of receiving the request.

17 (c) A temporary help company shall post in a conspicuous place a notice of
18 the rights provided to temporary employees by this section on a form provided
19 by the Commissioner.

1 § 583. PENALTIES AND ENFORCEMENT

2 The provisions against retaliation in subdivision 495(a)(8) of this title and
3 the penalty and enforcement provisions of section 495b of this title shall apply
4 to this subchapter.

5 Sec. 9. STUDY OF CONTINGENT WORK IN VERMONT

6 (a) The Commissioner of Labor shall examine and evaluate:

7 (1) the prevalence and types of contingent work in Vermont;

8 (2) the number, types, and geographic distribution of contingent workers
9 in Vermont, including temporary employees, leased employees, and home
10 workers;

11 (3) the current practices, policies, and procedures of employers in
12 relation to contingent workers; and

13 (4) the applicability and efficacy of Vermont’s employment laws with
14 respect to contingent workers.

15 (b)(1) Any employer surveyed by the Commissioner in relation to this
16 section shall provide the requested information to the Commissioner within 30
17 days.

18 (2) An employer that fails to provide the requested information to the
19 Commissioner within 30 days of being surveyed shall be subject to a fine of
20 \$100.00 for each day after 30 days that the employer fails to provide the
21 requested information to the Commissioner.

1 (c) The Commissioner of Labor shall submit a report to the House
2 Committee on Commerce and Economic Development and the Senate
3 Committee on Economic Development, Housing and General Affairs on or
4 before January 15, 2018. The Commissioner’s report shall include the study’s
5 findings and the Commissioner’s recommendation for legislation to improve
6 the protections afforded to contingent workers by Vermont’s employment
7 statutes.

8 Sec. 10. PORTABLE EMPLOYEE BENEFITS STUDY COMMITTEE

9 (a) Creation. There is created the Portable Employee Benefits Study
10 Committee.

11 (b) Membership. The Committee shall be composed of the following
12 nine members:

13 (1) one member of the House of Representatives who shall be appointed
14 by the Speaker of the House;

15 (2) one member of the Senate who shall be appointed by the Committee
16 on Committees;

17 (3) the Commissioner of Labor or designee;

18 (4) the Commissioner of Financial Regulation or designee;

19 (5) the State Treasurer or designee;

20 (6) the Secretary of Commerce and Community Development or
21 designee; and

1 (7) three members appointed by the Governor to represent the interests
2 of freelance workers in e-commerce, self-employed workers, and workers in
3 the “on-demand” or “app” economy.

4 (c) Powers and duties. The Committee shall study mechanisms for creating
5 insurance, retirement, and other types of employment benefits that are portable
6 and easily accessible to freelance workers in e-commerce, self-employed
7 workers, and workers in the on-demand or app economy, including the
8 following issues:

9 (1) the potential advantages and challenges to making group insurance,
10 retirement, and other types of employment benefits available to freelance
11 workers in e-commerce, self-employed workers, and workers in the on-demand
12 or app economy;

13 (2) the potential benefits and challenges of implementing a public,
14 private, or public-private model for the administration and provision of group
15 insurance, retirement, and other types of employment benefits to freelance
16 workers, workers in e-commerce, and workers in the on-demand or app
17 economy, including a per-transaction fee model, an hour bank, private or
18 public pretax accounts, and other mechanisms;

19 (3) the availability of traditional social safety nets such as
20 unemployment compensation, group health insurance, employer-sponsored life
21 insurance, and workers’ compensation to freelance workers, workers in

1 e-commerce, and workers in the on-demand or app economy who are not
2 connected to a traditional, full-time employer;

3 (4) the necessity for new mechanisms to replace or augment traditional
4 social safety nets such as unemployment compensation, group health
5 insurance, employer-sponsored life insurance, and workers' compensation for
6 workers who are not connected to a traditional, full-time employer;

7 (5) potential banking and insurance legislation that can allow freelance
8 workers, workers in e-commerce, and workers in the on-demand or app
9 economy to invest pretax dollars in accounts or insurance policies that would
10 replace or augment the traditional social safety nets;

11 (6) potential mechanisms to replace or augment traditional social safety
12 nets such as unemployment compensation, group health insurance,
13 employer-sponsored life insurance, and workers' compensation for workers
14 who are not connected to a traditional, full-time employer, including public or
15 private pretax accounts or insurance programs;

16 (7) potential funding models for mechanisms that would replace or
17 augment the traditional social safety nets, including both worker- and
18 consumer-driven funding models; and

19 (8) possible implementation plans with timelines for mechanisms that
20 would replace or augment the traditional social safety nets, including
21 mechanisms utilizing worker- or consumer-driven funding models.

1 (d) Assistance. The Committee shall have the administrative, technical,
2 and legal assistance of the Legislative Council, the Department of Labor, and
3 the Department of Financial Regulation.

4 (e) Report. On or before January 15, 2017, the Committee shall submit a
5 written report to the General Assembly with its findings and any
6 recommendations for legislative action.

7 (f) Meetings.

8 (1) The Commissioner of Labor shall call the first meeting of the
9 Committee to occur on or before September 15, 2016.

10 (2) The Committee shall select a chair from among its members at the
11 first meeting.

12 (3) A majority of the membership shall constitute a quorum.

13 (4) The Committee shall cease to exist on January 15, 2017.

14 (g) Reimbursement.

15 (1) For attendance at meetings during adjournment of the General
16 Assembly, legislative members of the Committee shall be entitled to per diem
17 compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for
18 no more than four meetings.

19 (2) Other members of the Committee who are not employees of the
20 State of Vermont and who are not otherwise compensated or reimbursed for

1 their attendance shall be entitled to reimbursement of expenses pursuant to
2 32 V.S.A. § 1010 for no more than four meetings.

3 Sec. 11. EFFECTIVE DATE

4 This act shall take effect on July 1, 2016.

DRAFT